

SBCivil Writ Petition No.1494/2004

Bhilwara Urban Cooperative Bank Ltd. & Anr.
V.
State of Rajasthan & Ors.

Date of Order :: 3rd May, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Rajesh Joshi, for the petitioners.
Mr. Chaitanya Gahlot, for the respondent No.3.

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The petitioner No.1, a cooperative society, involved in banking activities, advanced a sum of Rs.1,00,000/- as loan to M/s Punjab Agro Service Centre, Bhilwara on 20.6.1989. The proprietor of the firm M/s Punjab Agro Service Centre, Bhilwara is son of respondent No.3 Randheer Singh. The respondent No.3 executed a deed of guarantee at the time of disbursing loan as above. The respondent No.3 also executed a letter of undertaking showing the properties and fixed assets. M/s Punjab Agro Service Centre, Bhilwara failed to repay the loan, therefore, an order was made under Section 117 of the Rajasthan Cooperative Societies Act, 1965 (hereinafter referred to as "the Act of 1965") for enforcement of charge and execution proceedings were initiated under Section 118 of the said Act. The amount advanced and the interest thereupon could not be recovered from the principal loanee who happens to be the son of the respondent No.3. The proceedings were initiated against the respondent No.3, guarantor, and a notice accordingly was served upon him. Being aggrieved by the notice

dated 7.5.2002 the respondent No.2 preferred a revision petition before the Additional Registrar (II), Cooperative Societies, Jaipur under Section 128 of the Act of 1965. The revision petition preferred by the respondent No.3 stood rejected by order dated 15.7.2003. The respondent No.3 after dismissal of the revision petition under Section 128 of the Act of 1965 by order dated 15.7.2003 filed another revision petition before learned Cooperative Minister of Government of Rajasthan under Section 107 of the Rajasthan Cooperative Societies Act, 2001 (hereinafter referred to as "the Act of 2001") giving challenge to the notice dated 7.5.2002 and the order dated 15.7.2003 passed by the Additional Registrar (II) Cooperative Societies, Jaipur exercising powers under Section 128 of the Act of 1965. Learned Minister by order dated 20.10.2003 accepted the revision petition preferred by the respondent No.3 and set aside the notice dated 7.5.2002 as well as the order dated 15.7.2003 passed by the Additional Registrar (II) Cooperative Societies, Jaipur.

While accepting the revision petition learned Minister held that under the Act of 1965 and the Rules framed thereunder there is no provision to enforce the charge and execute the same against the guarantor. Being aggrieved by order dated 20.10.2003 this petition for writ is filed by the petitioner Bank.

It is contended by counsel for the petitioners that the order dated 20.10.2003 passed by learned Minister for cooperatives is wholly without jurisdiction as whatever power exercised by him under Section 107 of the Act of 2001 were already exercised by Additional Registrar (II), Cooperative Societies, Jaipur under Section 128 of the Act of 1965. It is also contended by counsel for the petitioners that learned Minister erred while holding that there is no provision under the Act of 1965 and the Rules framed thereunder to enforce charge and to execute the same upon a guarantor by over looking the provisions of Rule 92 of the Rajasthan Cooperative Societies Rules, 1966 (hereinafter referred to as "the Rules of 1966").

No reply to the writ petition has been filed on behalf of the respondents.

Admit.

With consent of counsel for the parties the writ petition is heard for its final disposal today itself.

The issue involved in the petition is that whether learned Minister was having any authority under Section 107 of the Act of 2001 to revise an order passed by the Registrar or by an authority having delegated powers of the Registrar exercising

powers under Section 128 of the Act of 1965? Section 128 of the Act of 1965 prescribes revisional powers of the Registrar, Cooperative Societies and the State Government. The provisions of Section 128 of the Act of 1965 reads as under:-

“Sec.128.Power of the Government and Registrar to call for proceeding of subordinate officers and to pass orders thereon.--(1)The State Government and the Registrar may call for the examine the record of any inquiry or the proceedings of any other matter, of any officer subordinate to them, except those referred to in section 125, for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer. If in any case, it appears to the State Government, or the Registrar, that any decision or order or proceeding so called for should be modified, annulled, or reversed, the State Government or the Registrar, as the case may be, may after giving persons affected thereby an opportunity of being heard, pass such order thereon as it or he thinks just:”

The Act of 1965 stood repealed by force of section 126 of the Act of 2001 which came into force on 3.10.2002. Under the Act of 2001 the powers corresponding to the powers enshrined under Section 128 of the Act of 1965 are prescribed under Section 107 that reads as under:-

“107. Power of revision of the Government and the Registrar.--(1) The Registrar, in case where action has been taken by any officer subordinate to the Registrar and the State Government, in case where action has been taken by the Registrar, may, on their own motion or on an application of any aggrieved person, call for and examine the record of any inquiry or the proceedings of all such matters in which an action has been taken under this Act, except those in which an appeal lies to the Tribunal, for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer. If in any case, it appears to the State Government or the Registrar, that any decision or order or proceeding so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may after giving persons affected a reasonable opportunity of being heard, pass such order thereon as it or he thinks just:”

From reading of provisions of Section 107 of the Act of 2001 it is crystal clear that these powers are corresponding and analogous to the powers as were available under Section 128 of the Act of 1965 to the State Government and the Registrar, Cooperative Societies. In the instant matter once the Registrar (Additional Registrar[II], Cooperative Societies, Jaipur exercising delegated powers of the Registrar), exercised his powers under Section 128 of the Act of

1965 then there was no power available with the Minister to revise the order passed by the Registrar while exercising powers under Section 107 of the Act of 2001. An order passed in revisional jurisdiction could have not been interfered, revised or examined by learned Minister under Section 107 of the Act of 2001. The Minister, therefore, apparently exceeded jurisdiction vested with him while passing the order impugned.

Though it is not necessary to examine the second contention of counsel for the petitioner as I have already held that the order impugned lacks jurisdiction but only to make it clear I also consider it appropriate to note that Rule 92 of the Rules of 1966 prescribes a complete procedure for execution of awards, decrees, orders and decisions. An immovable property mortgaged to the decree holder can very well be attached to secure the execution of decree. Learned Minister while passing the order impugned has also not properly examined the provisions of Rule 92 of the Rules of 1966.

For the reasons given above, this petition for writ deserves acceptance and, therefore, the same is allowed. The order dated 20.10.2003 (Anx.9) passed by learned Minister for the Department of Cooperatives, Government of Rajasthan, is hereby quashed. The order dated 15.7.2003 passed by the

Additional Registrar (II), Cooperative Societies,
Government of Rajasthan, Jaipur stands restored.

No order to cost.

(GOVIND MATHUR),J.

kkm/ps.